IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

APPEAL FROM ORDER NO.183 OF 2005

1. Brij Mohan Vij, aged 48 years,
   S/o Late Sri Sohan Lal Vij
2. Mahesh Vij S/o Late Sri Brij Mohan
3. Rakesh Vij S/o Late Sri Brij Mohan
   R/o Distt. School & Water Tank, Raman, Muzaffarpur
   Presently residing at Opp. Session Court,
   Brij Vihar, Haldwani, District Nainital

.... **Appellants**

Versus

1. New India Assurance Co. Ltd.,
   Opp. Session Court, Nainital Road,
   Haldwani, through Divisional Manager
2. Rafiqueul Rehman S/o Jalilurrehman,
   R/o Takia Mubarak Shah Khan,
   Distt. Rampur, Owner of Vehicle No.UP13-D-7341

.... **Respondents**

Sri Z.U. Siddiqui, learned counsel for the appellants.

Sri D.K. Sharma, learned counsel for the respondent No.1

Dated: 15.06.2006

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

The present appeal has been filed by the appellants against the judgment and award dated 27.1.2005 passed by A.D.J./Motor Accident Claims Tribunal, Haldwani, Distt. Nainital (***hereinafter will be referred to as the Tribunal***) in Motor accident Claims Case No.49 of 2004, by which the Tribunal partly allowed the claim petition of the appellant/claimants and awarded a sum of Rs.2,71,000/- as compensation with 9% interest from the date of application.

2. Brief facts of the case giving rise to the present appeal are that on 12.7.2003 at about 6:00 a.m., Smt. Urmila Vij (the deceased) while sitting in Santro Car No.U.A.04-5070 was going from Haldwani to Delhi and

when the said car reached at P.S. Hawalia, Town Civil Station, Area Civil Lines, Rampur, a Truck bearing No. UP.13-D-7341 which was being driven rashly and negligently by its driver, came from the opposite side and hit the car of the claimant/appellants, as a result of which Smt. Urmila Vij received grievous injuries and consequently she was succumbed to injuries. The claimant/appellants filed the claim petition before the Motor Accident Claims Tribunal for compensation amounting to Rs. 6,00,000/-.

3. The opposite parties contested the claim petition before the Tribunal. The opposite party No.1-United India Insurance Co. filed its written statement and stated that in the claim petition, the owner of the Santro Car No. UA.04-5070 and the insurance company by which the car was insured were not been made party. The accident had occurred on account of mistake of Car No.UA.04-5070, therefore, it was alleged that Opp. No.1-United India Insurance Co. was not liable to pay any compensation. In the addition plea, it was stated that insurance company can only be held liable to pay the compensation when it is proved that there was no breach of any condition of insurance policy alongwith validity and effectiveness of the driving licence of the person driving the vehicle at the time of the accident.

4. The Opp. No.2 – Sri Rafi Ul Rahman also filed its written statement and stated that the accident had not occurred on account of fault of Truck No. UP.13-D-7341 and the compensation determined by the claimant was wrong. The Truck in question was insured with New India Insurance Co. at the time of accident, therefore, Respondent No.2 is not liable to pay any compensation

and hence it was alleged that the claim was not liable to continue against Respondent No.2.

5. On the pleadings of the parties, the Tribunal framed necessary issues and after appreciating the evidence adduced by the parties, the Tribunal allowed the claim petition for Rs.2,71,000/-. It has also been ordered by the Tribunal that in case of failure in payment of said amount within a period of one month from the date of order, the claimant shall get simple interest at the rate of 9% per annum from the date of petition till the date of payment. Feeling aggrieved, the claimant has come up in this appeal for enhancement of the amount of compensation.

6. We have heard learned counsel for the parties and perused the entire evidence available on record.

7. The learned counsel for the appellants has submitted that the impugned judgment and award passed by the Tribunal on the question of compensation is erroneous and wrong as the correct principle of law in calculating the amount of the compensation has not been followed. It has also been submitted that the multiplier which has been adopted by the Tribunal is inadequate and after adopting the multiplier of 11 the amount of compensation awarded in favour of the claimants/appellant is on the very meager side. It is also submitted that the Tribunal has also not granted adequate amount in the funeral expenses as well as under the head of conveyance charges. It is also submitted that the rate of interest indicated in the impugned judgment and award is also very less.

8- The record shows that deceased Smt. Urmila Vij was travelling in Santro Car No.U.A.04-5070 and this car was dashed by Truck No. U.P. 13-D-7341. The finding of the Tribunal is that the truck in question was rash and negligent at the time of the accident and on account of the same the truck hit with Santro Car No.U.A.04-5070 with the result Smt. Urmila Vij sustained grievous injuries on her person and she died on account of the same. We also find ourselves in agreement with the findings recorded by the Tribunal on this issue.

9- The age of the deceased has been shown as 48 years at the time of her death. In the evidence also it has come that deceased Smt. Urmila Vij was 48 years of age when she died on account of the aforesaid accident. Brij Mohan Vij who is the husband of the deceased has been produced before the Tribunal as P.W.2, and he has also deposed in his evidence that at the time of her death Smt. Urmila Devi was 48 years of age. There is no evidence adduced by the other side contradicting the age of the deceased. The post mortem report also indicates that deceased Urmila Devi was 48 years of age at the time of her death.

10- As far as the income of the deceased is concerned the claim petition indicates that the deceased was earning a sum of Rs. 6,500/- per month from the Boutique business. The claimant in his statement also deposed that the deceased used to earn Rs. 6500/- per month from her business of Boutique Ready-made garments. The claimants have not filed any cogent and reliable evidence in order to support the income of the deceased. Therefore, in the absence of any iota of evidence with regard to the income of the deceased, it is

very difficult to assess her income. However, it is clear from the evidence on record that the deceased was physically and mentally fit at the time of her death, therefore, in absence of any evidence with regard to the income of the deceased, it can be safely assessed that the income of the deceased would be approximately Rs. 3000/- per month. Out of this amount, 1/3rd is to be deducted against the personal expenses of the deceased, therefore, the financial dependency of the claimants comes to Rs. 2000/- per month and this amount comes annually as 2000 X 12= Rs. 24,000/-.

11- Although the deceased was 48 years of age at the time of her death, but it is to be noted in this case that now the claimant is aged about 55 years of age. Therefore keeping in view the age of the claimant, who is the husband of the deceased as well as the age of the deceased who was 48 years of age at the time of her death, a correct multiplier of 11 has been adopted by the Tribunal. We are not inclined to interfere in the impugned judgment and award passed by the Tribunal by which the multiplier of 11 has been adopted. We are also of the view that the claimants are entitled for the total amount of compensation on the basis of following calculation:-

Rs. 24000/- X 11 = Rs. 2,64,000/-.

12- Apart of the aforesaid amount, the claimants must have incurred an amount of Rs. 2000/- on the cremation of the deceased, hence the claimants are entitled for this amount. The claimants are also entitled for an amount of Rs. 5000/- for loss of love and affection. Therefore as per the aforesaid calculation the claimants are entitled for an amount of Rs. 2,64,000/- + 2000/-+5000/ -=2, 71,000/- as compensation in lieu of death of Smt. Urmila Vij.

13- As the offending truck in question was insured with New India Assurance Company, therefore the insurer of the vehicle is liable to pay the amount of compensation to the claimants.

14- The rate of interest indicated in the impugned judgment and award does not require any interference by this Court.

15- On the basis of the assessment of evidence on record, we come to the conclusion that the appeal lacks merit and is liable to be dismissed.

16- Accordingly the appeal is dismissed. The judgment and award dated 27.1.2005 passed by A.D.J./ Motor Accident Claims Tribunal, Haldwani, Distt. Nainital in Motor Accident Claims Case No.49 of 2004, is hereby confirmed. No order as to costs.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

ISB